

**COMMONWEALTH OF MASSACHUSETTS
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of)	Case No. 23-001-S
)	(PI-2022-11-22-006)
Carlos Vieira)	

FINAL DECISION

Pursuant to 555 CMR 1.10(1), a Hearing Officer was assigned to conduct an adjudicatory proceeding regarding this matter on behalf of the Peace Officer Standards and Training Commission (“Commission”).

Pursuant to M.G.L. c. 30A, §§ 11(7) and (8) and 555 CMR 1.10(4)(e)(2), the Hearing Officer issued the attached Initial Decision and Order to the Commission, and the parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Initial Decision of the Hearing Officer.

For the above reasons, the Motion for Default and Final Decision filed by the Division of Police Standards and the relief sought therein are hereby **granted**. The Commission finds that Respondent Carlos Vieira has been [REDACTED]. The Respondent’s certification is hereby revoked. The Executive Director shall take the necessary steps to publish the Respondent’s name in the National Decertification Index. This is the final decision of the Commission. M.G.L. c. 30A, §§ 11(8) and 13; 555 CMR 1.10(4)(e).

By vote of the Commission on September 14, 2023.

A party aggrieved by this decision may commence an appeal to the Superior Court within thirty (30) days in accordance with M.G.L. c. 30A, § 14, to the extent allowed by law. After initiating proceedings for judicial review in Superior Court, the Appellant, or his attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to: Carlos Vieira, Respondent
 Timothy D. Hartnett, Esq., Commission Enforcement Counsel
 Lawrence Police Department

Date Issued: September 14, 2023.

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PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of)	Case No. 23-001-S
)	(PI-2022-11-22-006)
Carlos Vieira)	

INITIAL DECISION

(M.G.L. c. 30A, § 11(8); 555 CMR 1.10(4)(e)(2))

Introduction

At issue in this matter is whether the proceeding brought by the Massachusetts Peace Officer Standards and Training Commission (“Commission”) should now terminate with a default decision in the Commission’s favor, pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01(7)(a), and 555 CMR 1.10(4). Carlos Vieira (“Respondent”) did not answer, appear, or defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”). He also did not respond to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, the Hearing Officer recommends that the Commission finalize this Initial Decision, grant the Division’s Motion for Default and Final Decision (“Motion”), and determine the discipline that should be imposed against the Respondent.

Procedural History

The Division served the Respondent with an OTSC, dated May 3, 2023, by United States Postal Service (“USPS”).¹ (Ex. A – OTSC; Ex. B – OTSC Cover Letter). The USPS tracking information indicates that the OTSC was delivered on May 12, 2023, to the Respondent’s last

¹ This was the Division’s third attempt to confirm Respondent’s receipt of the OTSC. Copies of the OTSC were mailed to the Respondent via United Parcel Service (“UPS”) on April 12, 2023, and April 26, 2023. (Ex. D – OTSC and USPS Delivery Notification). Despite the UPS confirmation of delivery, the Division was unable to confirm the actual receipt and delivery of the OTSC to the Respondent. The third attempt was made via USPS. (Ex. D).

known address.² (Ex. D - OTSC UPS and USPS Delivery Notification). The “Legal Mail Received” Log (“Log”) confirms that the Respondent received the OTSC.³ (Ex. C – “Legal Mail Received” Log). By operation of law, as established below, the Commission may presume that the Respondent received the OTSC and cover letter.

The OTSC and cover letter contained the allegations against the Respondent and notification of the obligation to file an answer or otherwise respond to the allegations within twenty-one (21) days. (Exs. A and B). The OTSC stated that, if a responsive and timely answer was not filed, the Commission may act. (Ex. A). In particular, the Respondent was notified that the Commission would enter a Final Decision and Order that assumes the truth of the allegations in the OTSC and that the Commission may take action against the Respondent’s certification, including granting in full the relief contemplated in the OTSC. (Ex. A). The Respondent was notified that the Commission may take these actions both by letter and by a separate page attached to the OTSC. The Respondent failed to file a responsive and timely answer to the OTSC. (Ex. E - Motion for Default).

The Division sent the Motion to the Respondent, dated June 30, 2023, by USPS with delivery to the Respondent’s same last known address on July 3, 2023. (Ex. F – Motion USPS Delivery Notification). By operation of law, the Commission may presume that the Respondent received the Motion. The Hearing Officer finds that the OTSC was attached as an exhibit to the Motion. (Ex. E). The Respondent failed to respond to the Motion and the OTSC.

² [REDACTED]

³ The [REDACTED] keeps this log as verification that the [REDACTED] received his legal mail. In this process, the person in the mailroom receives the mail and gives the mail to the Counselor Supervisor. The Supervisor then disperses the mail to each unit counselor who then goes to the [REDACTED] bubble and calls down the [REDACTED]. With a camera recording, the [REDACTED] signs the log and is then given a photocopy of the envelope (as the actual envelope is confiscated). The legal mail is then opened in front of the [REDACTED], and flipped, page by page. (Ex. D).

Allegations Contained in the OTSC

1. [REDACTED]

[REDACTED] :

(i) [REDACTED] and

(ii) [REDACTED].

[REDACTED]

2. On November 2, 2022, the Respondent's appointing agency, the Lawrence Police Department, submitted a final report to the Commission which found that the Respondent was [REDACTED] described above and recommended that the Commission decertify him.

3. On November 22, 2022, pursuant to 555 CMR 1.01(3)(b), the Commission directed the Division to open a preliminary inquiry to investigate the allegation that the Respondent was [REDACTED], and therefore subject to mandatory revocation of his police certification. M.G.L. c. 6E, § 10(a)(i); 555 CMR 1.02(3)(b).

4. As of November 22, 2022, the Respondent was certified as a police officer pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.

Legal Basis for Commission Action

5. Pursuant to M.G.L. c. 6E, § 3(a):

The [C]ommission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:

- (1) act as the primary civil enforcement agency for violations of [chapter 6E]; . . .
- (4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the [C]ommission deems reasonable; . . .
- (23) restrict, suspend or revoke certifications issued under [chapter 6E];
- (24) conduct adjudicatory proceedings in accordance with chapter 30A; . . .

6. Pursuant to M.G.L. c. 6E, § 10(a)(i), [t]he [C]ommission shall, after a hearing, revoke an officer's certification if the [C]ommission finds by clear and convincing evidence that ... the officer is convicted of a felony."

7. Pursuant to M.G.L. c. 6E, § 10(g), the Commission shall publish any revocation order and findings and shall provide all revocation information to the National Decertification Index.

8. Pursuant to M.G.L. c. 6E, § 10(h), the Commission may institute a disciplinary hearing after an officer's appointing agency has issued a final disposition on the alleged misconduct.

Notice

The Respondent was notified at his last known address both by the OTSC and by a cover letter accompanying it that if he did not file an answer or otherwise respond to the allegations in the OTSC in a responsive and timely manner, the Commission could enter a Final Decision and Order that assumes the truth of the allegations in the OTSC. In addition, the notice informed the Respondent that the Commission may take particular action against his certification, including granting in full the relief contemplated in the OTSC. See Lawless v. Bd. of Registration in Pharmacy, 466 Mass. 1010, 1010 n.1 (2013) (informing pharmacist that, upon default, "board could enter a final decision accepting as true the allegations contained in the show cause order"); see also University Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 396 Mass. 533, 539 (1986) (holding that default provision did not violate due process, as it "afford[ed] the [R]espondent reasonable procedural safeguards for notice and opportunity to be heard"). Despite being afforded the opportunity to do so, the Respondent failed to file an answer, request an adjudicatory hearing, or otherwise respond.

On June 30, 2023, the Division moved for Default Judgment and Final Decision. The Division served said Motion, with exhibits A through F attached, by UPS. Tracking information indicated delivery to the Respondent’s last known address on July 3, 2023. (Ex. F). Under Massachusetts case law, there is a presumption that the addressee receives properly deposited mail. Espinal’s Case, 98 Mass. App. Ct. 152, 156 (2020), citing Eveland v. Lawson, 240 Mass. 99, 103 (1921) (“[t]he depositing of a letter in the post office, properly addressed, postage prepaid, to a person at his place of business or residence, is prima facie evidence that it was received in the ordinary course of mails”); see also Commonwealth v. Crosscup, 369 Mass. 228, 239 (1975) (“Proper mailing of a letter is ‘prima facie evidence’ in civil cases of its receipt by the addressee.”) (Citations omitted.) Further, nothing in Chapter 6E prohibits the Division from relying on the certification that it mailed the Motion via USPS delivery and the signed Log from Respondent’s place of incarceration. See Espinal’s Case, 98 Mass. App. Ct. at 157 (stating that “on other occasions when the Legislature intended to impose a requirement for notice by certified mail, return receipt requested, it has done so explicitly”). Sending a letter by USPS should be accorded the same weight as mailing of a letter. The Hearing Officer may presume that the Respondent received the Motion that was sent through USPS, postage paid, delivered to the last known address, and signed for on the mail Log for [REDACTED].

Exhibits

In ruling of this matter, the Hearing Officer considers the Motion filed by the Division and the following exhibits:

Exhibit A: OTSC, dated April 12, 2023.

Exhibit B: OTSC Cover Letter, dated April 12, 2023, April 28, 2023, and May 3, 2023.

Exhibit C: “Legal Mail Received” Log, dated May 12, 2023.

Exhibit D: OTSC UPS and USPS Delivery Notification, dated April 14, 2023, April 28, 2023, and May 12, 2023.

Exhibit E: Motion, dated June 30, 2023.

Exhibit F: Motion USPS Delivery Notification, dated July 3, 2023.

Exhibit G: Executive Director Notice of Suspension, dated January 5, 2023.

The Hearing Officer takes administrative notice of all papers filed in this case, as well as Chapter 6E and Commission Regulations. See M.G.L. c. 30A, § 11(6).

Discussion

Massachusetts General Laws c. 30A, § 10(2) specifically authorizes agencies to “make informal disposition of any adjudicatory proceeding ... by default.” Pursuant to 801 CMR 1.01(7)(a), a party may request the Presiding Officer by motion to “issue any order or take any action not inconsistent with [the] law or 801 CMR 1.00.” (For the definition of relevant terms, see M.G.L. c. 30A, § 1(2) (defining “agency”) and M.G.L. c. 30A, § 1(3) (defining a “party” to an adjudicatory proceeding)). Thus, the Commission is empowered to enter a Default Judgment and issue a Final Decision in this matter.

In University Hosp., 396 Mass. at 539, the Supreme Judicial Court held that the default process established by an agency must satisfy the requirements of due process. A default process would be upheld where it afforded reasonable procedural safeguards for notice of consequences of failure to answer, it afforded the opportunity to object, and judicial review of the entire proceeding was available. Id. In the present case, the OTSC and the Motion (both sent by tracking) provided the Respondent with notice of the consequences of failing to appear or defend in this matter, as well as an opportunity to object.⁴ In addition, pursuant to M.G.L. c. 30A, § 14,

⁴ The first two attempts were sent via UPS. The third and final attempt was sent via USPS. (Exs. C and D).

judicial review of the entire proceeding is available to the Respondent. Therefore, the default process established by the Commission is both legal and proper.

By reason of the Respondent's default, and upon consideration of the Division's Motion, the Commission should grant the Motion. See University Hosp., 396 Mass. at 539; Productora e Importadora de Papel, S.A. de C.V. v. Fleming, 376 Mass. 826, 833-35 (1978). The Commission should find that the allegations in the OTSC and the violations of the statutes and regulations stated therein are deemed admitted and established. The Respondent was afforded an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10 and 11(1), and 801 CMR 1.01(4)(c).

Conclusion

The Division's Motion for Default and Final Decision should be granted for the reasons stated above. The Hearing Officer recommends that the Commission make final this Initial Decision and its allegations of misconduct against the Respondent and determine the appropriate discipline. In accordance with the provision of 555 CMR 1.10(4)(e)(2)(b), each of the parties has thirty (30) days to file written objections to the Initial Decision with the Commission.

SO ORDERED.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION
Presiding Officer



Hon. Kenneth J. Fishman (Ret.)
Hearing Officer

Dated: July 25, 2023

Notice to: Carlos Vieira, Respondent
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Lawrence Police Department